IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

INSOLVENCY PETITION NO.43 OF 2003

WITH

NOTICE OF MOTION NO.70 OF 2003

Re: Beena Hitesh Seth ..Debtor.

Ex-parte:

Dhanraj S. Sanghavi ..Petitioning Creditor.

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Mr. Kishore Jain i/b Mr.Tusha Goradia for the Petitioning Creditor.

Mr.R.L.Bhatia for the Debtor.

Mr.J.S.Saluja i/b M/s.M.V.Kini & Co. for Bank of Baroda.

Mr.Ramesh C. Jain for supporting creditor.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th February, 2005.

P.C. :

1. Counsel appearing on behalf of the Bank of Baroda undertakes to file his Vakalatnama of M/s. M.V.Kini & Co. within a period of one week.

2. In pursuance of the order dated 18th January, 2005 Bank of Baroda has appeared in these proceedings through its advocates. As noted in the previous order, on 23rd July, 2003 the bank issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The notice recorded that the amount that was due and payable to the Bank as on 8th July, 2003 was Rs.50,37,986.51. Today the bank has placed on the record a statement showing that its dues as on 30th September, 2004 are to the extent of Rs.58,52,000/- approximately.

3. Counsel for the Judgment Debtor states that the Debtor has no objection if the properties in respect whereof the Official Assignee has been appointed as interim Receiver are sold to the extent required for realization of the outstanding dues of the Bank. In the circumstances, there being a consensus between the learned Counsel, the following order is passed at their request and with their consent:

i) The Official Assignee is directed to invite bids after obtaining valuation of the following properties in respect of which he has been appointed as Receiver :

Shop Nos.8 and 9, Dev Prayag Co-op.Hsg. Soc. Ltd. Kandivli (West) and Flat Nos.404 and 504 Gaurav Jhankar Co-op.Hsg. Soc. Ltd. Kandivli (West).

ii) The Judgment Debtor and the Bank of Baroda shall also be at liberty to furnish offers of third parties in respect of the sale of the aforesaid properties in the course of the auction sale to be conducted by the Official Assignee;

iii) The Official Assignee shall place his report before the Court for the sanction of the sale;

iv) The Petitioning Creditor, Dhanraj Sanghvi, and the supporting Petitioning Creditor, Vinod R. Jain shall be at liberty to institute a suit in an appropriate Civil Court for the recovery of their alleged dues within four weeks of the

sale being sanctioned;

v) The Official Assignee shall in the first instance, on the sale being sanctioned by the Court, hand over to the Bank of Baroda an amount representing the outstanding dues that are payable to the bank. Counsel for the Bank of Baroda states on instructions that apart from the security in respect of the aforesaid properties, it has no other security in respect of the cash credit facility;

vi) Out of the surplus if any, after the payment is made under clause (vi), the Official Assignee shall upon being informed by the Petitioning Creditor, Dhanraj Sanghvi, of the institution of a suit for the recovery of his dues, transfer an amount of Rs.8,56,000/- to the account of the suit. The Debtor shall be at liberty to move the appropriate Court for directions in regard to the aforesaid amount which has been credited by the Official Assignee;

vii) The other supporting Creditor Vinod R. Jain

shall be at liberty to apply to the Court in which he institutes a suit for directions in regard to the furnishing of security or otherwise in respect of his claim in the suit;

viii) In the event that the proceeds which are realized from the sale of the immovable properties referred to in clause (i) are not adequate, to provide, in addition to the payment due to the bank, security to cover the claim of the Petitioning Creditor, Dhanraj Sanghvi, the Insolvency Registrar shall place the Petition before the Court for directions;

ix) In the event there is any excess in the hands of the Official Assignee after the payment of the outstanding dues of the Bank and after transferring the amount of Rs.8,56,000/- to the credit of the suit instituted by the Petitioning Creditor, Dhanraj Sanghvi, and after the deduction of the costs, charges and expenses of the Official Assignee, the Official Assignee shall then pay over the surplus to the Debtor subject to such further directions as may be passed by the appropriate

Court in proceedings to be instituted by the respective Petitioning Creditors;

x) The Official Assignee shall until the sale is completed continue to act as interim Receiver in respect of the properties for the purpose of completing the sale and for implementing the aforesaid order. The initial deposit for the purposes of meeting the expenses of the sale is agreed to be made by the Bank of Baroda with the Official Assignee. The Official Assignee shall utilize an amount of Rs.50,000/- towards the expenses of the sale to be reimbursed out of the sale proceeds;

xi) Counsel appearing for the Bank of Baroda states on instructions that the Bank shall forward to the Official Assignee title deeds of the properties which have been mortgaged in favour of the Bank;

xii) The Official Assignee shall expedite the implementation of the aforesaid consent terms and endeavour to complete the sale with the prior sanction of the Court within a period of

three months.

The Petition is disposed of.